

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CLERK'S OFFICE
Atlanta

FEB 23 2005

[Signature] Clerk
Deputy Clerk

TONY L. WARE, CEO and
T. L. WARE BOTTLING COMPANY,
INC.

Plaintiffs,

v.

FLEETBOSTON FINANCIAL CORP.,
f/k/a BANKBOSTON CORP.,

Defendant.

Civil Action
File No. 1:05-CV-0426MHS

**DEFENDANT'S RULE 60(b) MOTION
TO SET ASIDE ORDERS**

Through blatant misrepresentation Plaintiffs obtained two orders from presiding duty judges in the Fulton Superior Court. The first "consent" order (the "Brogdon Order") purported to adjudge a \$922 million default upon FleetBoston Financial Corporation (hereinafter "FBF") and the second "consent" order (the "Baxter Order") purported to reinstate the default. This Court should vacate the Brogdon Order and the Baxter Order pursuant to Fed. R. Civ. P 60(b)(3) because the Orders were procured by fraud, misrepresentation, and other misconduct and pursuant to Fed. R. Civ. P. 60(b)(4) because the Orders were entered without due process. This Court also should levy the

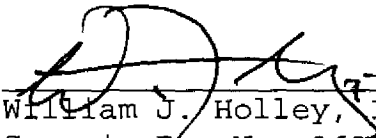
strongest sanctions available on Plaintiffs and their counsel for their conduct in procuring these false Orders.

In support of this Motion, FBF relies on the allegations contained in the Complaint, matters of record in this civil action, the contemporaneously filed Brief in Support of Defendant's Rule 60(b) Motion to Set Aside Orders, the Affidavits of The Honorable Jerry W. Baxter, Martha R. Francis, Cristina Sanabria, and William J. Holley, II, and all materials contained in the Appendix in Support of Defendant's Rule 12 and Rule 60 Motions filed on February 22, 2005. FBF makes special appearance to file this Motion and specifically reserves all defenses and objections, including but not limited to improper service and lack of personal jurisdiction.

Respectfully submitted,

PARKER, HUDSON, RAINER & DOBBS LLP

By:



William J. Holley, II
Georgia Bar No. 362310
Nancy H. Baughan
Georgia Bar No. 042575
Michael D. Grider
Georgia Bar No. 310473

1500 Marquis Two Tower
285 Peachtree Center Avenue, N.E.
Atlanta, Georgia 30303
(404) 523-5300 (telephone)
(404) 420-5549 (facsimile)

Attorneys for FleetBoston
Financial Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANT'S RULE 60(b) MOTION TO SET ASIDE ORDERS** upon all parties to this matter by causing to be deposited in the U.S. Mail, proper postage prepaid, a true copy of same addressed as follows:

Michael R. Johnson, Sr.
Johnson & Associates, P.C.
340 West Peachtree Street, N.E.
Suite 200
Atlanta, Georgia 30308

Dr. Tony L. Ware, PhD, JD
Post Office Box 150524 - Dept. 0227
Atlanta, Georgia 30315

This 23RD day of February, 2005.


William J. Holley, II